

REMARKS

Claims 1, 3-9, 12-14, 16-22, 24-26, and 28-29 are pending in the Application. Claim 29 has been added. No new matter has been added. Entry of the amendment is respectfully requested. Reconsideration is respectfully requested.

As the record indicates, the Applicant has strived to advance prosecution. However, the actions by the Office appear deliberately calculated to cause delay. The current Office Action (dated January 6, 2004) is the fourth non-final Office Action. On several occasions the Applicant has placed claims indicated by the Office to be allowable into independent form only to have the claims subsequently rejected. For example, the Office Action dated January 29, 2003 stated that claim 10 (and claims 11-22 which depend thereon) would be allowable if claim 10 was rewritten in independent form. Claim 10 was rewritten into an independent form in the Response filed April 17, 2003. Claim 10 was rejected in the next Office Action (dated July 9, 2003). Also, the Office Action dated July 9, 2003 stated that claims 2 and 27 would be allowable if rewritten in independent form. Claims 2 and 27 were rewritten into an independent form (as claims 1 and 26) in the Response filed October 8, 2003. These claims (claims 1 and 26) were likewise rejected in the next Office Action (dated January 6, 2004).

In response to the Office's propensity to repeatedly renege on indications of allowable subject matter, Applicant has reinstated original claim 1 (as claim 29). MPEP § 608.01(s). Applicant previously respectfully traversed the rejection of claim 1. Original claim 1 was canceled with the agreement that the application would be placed in condition for allowance, as expected by the statements in the Office Action dated July 9, 2003. Applicant reserved all rights

regarding claim 1, including its reinstatement. The subject matter of original claim 1 was and continues to be allowable over the prior art of record.

The latest indicated allowance of claims 12-14 and 16-22 is greatly appreciated. Claim 13 (along with claims 12, 14, 19-22 which depend therefrom) has been allowed. Thus, the reference to claim 13 in a rejection has been disregarded as being a typographical error.

The Rejections

Claims 1, 3-9, 24-26, and 28 were rejected under 35 U.S.C. § 103(a) as obvious over Swegen (US 5,047,613) in view of Ramsey (US 5,842,188).

Applicant respectfully traverses the rejections. Applicant traverses the rejections on the grounds that Applicant's claims recite features and relationships which are neither disclosed nor suggested in the prior art, and because there is no teaching, suggestion, or motivation cited so as to produce Applicant's claimed invention. The features recited in Applicant's claims patentably distinguish over the applied references.

For reasons of brevity, Applicant has not necessarily presented all the reasons as to why the applied references do not render the claims obvious. Applicant reserves the right to later present additional reasons. Nevertheless, Applicant's arguments show that the applied references, taken alone nor in combination, neither teach nor suggest all of the recited features and relationships. Nor would it have been obvious to one having ordinary skill in the art to have modified the references as alleged to have produced the recited invention. Therefore, it is respectfully submitted that the 35 U.S.C. § 103(a) rejections should be withdrawn.

Claim 1

The Action (on page 4) admits that Swegen does not teach or suggest many of the recited features and relationships. Applicant respectfully submits that Swegen further does not teach or suggest a controller having the ability to cause generation of a charge record that includes data representative of the monetary value source, the merchandise charge, and the dispensed cash value amount. Swegen's cash and fuel dispenses are independent of each other. Where are they part of the same charge record?

Ramsey cannot alleviate the noted deficiencies in Swegen. The Action alleges that "it is obvious" that Ramsey's "card reader 51 reads the card and creates a charge record including a source, charge, and amount, as a receipt is printed (FIG. 4)." The Applicant respectfully disagrees. Ramsey does not teach or suggest a receipt including a monetary value source (credit card), a merchandise charge (fuel charge), and a dispensed cash amount, as alleged. Applicant respectfully submits that Ramsey does not teach or suggest dispensing (currency) change when a credit card is used (col. 6, lines 40-52). Thus, dispensed change cannot constitute the dispensed cash amount recited in the claim.

Applicant respectfully submits that the Office misinterprets the "cash advance" language mentioned in Ramsey. The language appears only once in Ramsey. It is in an Abstract line that appears to have several typographical errors (e.g., "fuel, cards, selling") and conflicts with Ramsey's teaching. In light of Ramsey's Specification as a whole it appears that "cash advance" only pertains to a fuel purchaser inserting a prepayment (advance) of cash into the system, and receiving change back from overpayment in excess of fuel purchased. Where does Ramsey teach

or suggest a fuel purchaser getting cash when a credit card is used? Contrarily, Ramsey teaches against providing a cash withdrawal (e.g., col. 13, lines 9-18). In Ramsey's embodiments the dispense of currency is only provided based on the user having made an overpayment. Ramsey's dispensing means (125, 126) is a change dispenser, not a cash withdrawal machine (e.g., ATM). It follows that Ramsey's "cash advance" cannot constitute the dispensed cash amount.

Nevertheless, even if it were somehow possible for a fuel purchaser in Ramsey to receive a cash advance from a credit card as alleged, Ramsey still could not alleviate the noted inability of Swegen to cause generation of the charge record. A cash advance transaction in Ramsey (if somehow possible) would be independent of a fuel charge transaction. Where does Ramsey teach or suggest a receipt (the alleged charge record) having thereon both a fuel charge and a cash advance? Even if a cash advance from a credit card was somehow possible in Ramsey, there would still be no teaching or suggestion that it would be included along with a fuel charge on the same receipt, as alleged. Contrarily, Ramsey's teaching of keeping credit and cash payments separate, resulting in separate receipts (col. 3, lines 34-35; col. 6, lines 51-52, and 66-67), would likewise have to extend to cash advance and fuel charge payments. It follows that Ramsey, like Swegen, also does not teach or suggest the recited ability to generate the charge record.

The Office has not established a *prima facie* showing of obviousness. Even if it were somehow possible for the references to be combined, the resultant combination would still lack the recited features and relationships. Thus, it would not have been obvious to one having ordinary skill in the art to have modified the references in the manner alleged to have produced the recited invention. Applicant respectfully submits that in light of the failure of the applied references to teach or suggest all of the recited features and relationships, combined with the lack

of any other supporting evidence of record, the rejection is not valid. *In re Lee*, supra. *In re Zurko*, supra. Thus, Applicant respectfully submits that the 35 U.S.C. § 103(a) rejection of claim 1 should be withdrawn.

Regarding independent claims 26, 28, and 29, note Applicants' remarks in support of the patentability of claim 1.

The Dependent Claims

Each of the dependent claims depends directly or indirectly from an independent claim. The independent claims have been previously shown to be allowable. "If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious" (MPEP 2143.03). *In re Fine*, 5 USPQ2d 1596 (Fed. Cir. 1988). Thus, it is asserted that the dependent claims are allowable on the same basis.

Furthermore, each of the dependent claims additionally recites specific features and relationships that patentably distinguish the claimed invention over the applied art. None of the references, taken alone or in combination, discloses or suggests the features and relationships that are specifically recited in the dependent claims. Thus, it is respectfully submitted that the dependent claims are further allowable due to the recitation of such additional features and relationships.

Fee For Additional Independent Claim

Applicant has previously paid for twenty-eight (28) claims. Twenty-three (23) claims remain pending. Please charge the fee associated with the submission of one additional independent claim (\$86) and any other fee due to Deposit Account 09-0428.

Conclusion

Allowance of all of Applicant's pending claims is respectfully requested.

The undersigned will be happy to discuss any aspect of the Application by telephone at the Examiner's convenience.

Respectfully submitted,



Ralph E. Jocke Reg. No. 31,029
WALKER & JOCKE
231 South Broadway
Medina, Ohio 44256
(330) 721-0000
Customer No. 28995